IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 61 OF 1989.

The Commissioner of Income-Tax. ... Applicant.

V/s.

M/s.Vulcan Lavel Ltd. ... Respondent.

Parag Vyas for the applicant.

None for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 1st July 2005.

P.C. :

. This reference pertain to assesment years 1979-80 and 1981-82. By this reference, under section 256(1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the the amount of Rs.20,000 contributed by the assessee towards construction of veterinary hospital at Gajawal, which was disallowed by the IAC (Asst.) as a donation, is a revenue expenditure

allowable as a deduction in computing the profits and gains of the; business?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance under Rule 6D of the Income-tax Rules, 1962 should be computed on the basis of total expenditure on each employee for the whole year and not on the basis of expenditure on each trip?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of sec.40(c) and not those of sec.40A(5) of the Income-tax Act, 1961 should be applied in computing the disallowance in respect of payments to Directors who are also employees of the assessee-company?

2. So far as question No.1 is concerned, in view of the reasons recorded by us in our judgment dated 1st July, 2005 passed in Income-Tax Reference No.397 of 1988 (**C.I.T. v. M/s.Pithwa Engg.Works**); wherein we have relied upon decision of this court in the case of **C.I.T. v. Camco Colour Co.** (2002)

254 ITR 565, we do not think it necessary to answer this question, having negligible tax effect.

3. So far as question No.2 is concerned, learned counsel for the revenue submits that the said question is covered by the decision of this Court in the case of **C.I.T. v. Aorow India Ltd.**, (1998) 229 ITR 325 and has to be answered in the negative i.e. in favour of the revenue and against the assessee.

4. So far as question No.3 is concerned, learned counsel for the revenue fairly stated that the said question is squarely by the decision of this Court in the case of **C.I.T. v. Hico Products Pvt.Ltd.(No.1)**, (1993) 201 ITR 567 and has to be answered in the affirmative i.e. in favour of assessee and against the revenue.

5. In the result, question No.1 is returned unanswered; question No.2 is answered in negative i.e. in favour of the revenue and against the assessee and question No.3 is answered in the affirmative i.e. in favour of the assessee and against the revenue. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**